

REMARKS

Upon entry of this amendment, Claims 1-6, 8, 10-20, 35-61 are pending.

Claim 1 has been amended to clarify the subject matter claimed. Support can be found throughout the specification. *See*, for example, page 19, paragraph [0087] and the original claims.

Claims 3 and 40 have been amended to clarify the subject matter claimed. Support can be found throughout the specification. *See*, for example, page 3, paragraph [0010].

Canceled Claim 7 has been reinstated as new Claim 44. As a result, Claims 10-15 have been amended to depend on Claim 44, and canceled Claim 9 has been reinstated as new Claim 45.

Claim 35 has been amended to improve form.

New Claims 41-50 have been added to clarify the subject matter claimed. Support can be found throughout the specification, including the original claims. For example, support for Claims 41, 42, and 47 can be found at page 19, paragraph [0087]. Claim 43 is supported by page 20, paragraph [0090]. Claims 48-50 are supported by page 16, paragraph [0081], and page 21, paragraph [0093], *etc.*

New method Claims 51-61 are added to clarify the subject matter claimed. Support can be found throughout the specification, including the original claims. *See*, for example, original Claims 19, 20, and 27-34, and page 3, paragraph [0011]. Thus no new matter is introduced.

Applicants submit that, pursuant to MPEP 821.04, the new method Claims 51-59 are eligible for being rejoined with the pending product / apparatus claims, because these method claims are directed to “a nonelected invention ... depend from or otherwise require all the limitations of an allowable (product) claim.”

Further, pursuant to MPEP 821.04(b), “[w]here claims directed to a product and to a process of making and/or using the product are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or a process. *See* MPEP § 806.05(f) and § 806.05(h). ... However, if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or

otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must depend from or otherwise require all the limitations of an allowable product claim for that process invention to be rejoined. Upon rejoinder of claims directed to a previously nonelected process invention, the restriction requirement between the elected product and rejoined process(es) will be withdrawn” (emphasis added).

“Process claims which depend from or otherwise require all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier” (emphasis added).

Applicants respectfully request reconsideration in view of the above amendments and the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the outstanding Office Action.

Claim Rejections Under 35 U.S.C. § 103

Claims 1-6, 8, 10-14, 17, 18, and 35-40 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Logan *et al.* (PCT/US00/15259, or “Logan”) and further in view of White (U.S. Pub. No. 2004/0093077 A1, or “White”).

The Examiner essentially argues that Logan discloses the claimed invention with the exception of the specific hinge as described in the claim (before the instant amendments), while White makes up the deficiency.

Claims 19-20 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Logan and White in view of Scholz *et al.* (U.S. Pat. No. 6,273,912, or “Scholz”).

The Examiner essentially argues that Logan and White disclose all the elements of Claims 19 and 20 except for the opening prepared as recited in the claims, while Scholz makes up the deficiency.

Applicants have amended the claims to further clarify the subject matter claimed. Applicants submit that the amended claims are novel and not obvious in view of the cited art, either alone or in combination (assuming without conceding that the cited art can be combined as suggested by the Examiner).

Specifically, amended Claim 1 recites that “... the distal portion having an annular element comprising a graft retention component to secure the tissue ...” (emphasis added). Applicants submit that Logan fails to disclose a distal portion having such an annular element comprising such a graft retention component. Figure 2 of Logan shows a discontinuous medial portion 208. Page 15, lines 22-25 of Logan states that “[t]he flexible nature of the nitinol material and the discontinuity of medial portion 208 permits connector to expand and contract with respect to diameter 212” (emphasis added). This discontinuity of medial portion 208 is essential for the function of the connector assembly in Logan, since mounting the connector assembly in Logan onto the annular recess 154 of the connector support member 152 requires the connector assembly to be expandable and/or retractable. Thus, Logan fails to disclose the use of any “annular element” as recited in the pending claims in its connector assembly, especially not any annular element that “has a “fixed cross-sectional area” as recited in new Claims 41 and 47.

Neither White nor Scholz makes up this deficiency. Therefore, the cited art, either individually or in combination fails to teach all the limitation of the presently claimed invention. Reconsideration and withdrawal of the obviousness rejection are respectfully requested.

Applicants also disagree with the reasoning behind the rejections of at least some of the dependent claims. However, in view of the claim amendments and arguments above, it is not necessary to address these rejections at this time.

Upon the allowance of the product / apparatus claims, Applicants respectfully request the Examiner to rejoin and examine the method Claims 51-61, which depend from or otherwise require all the limitations of the patentable product.

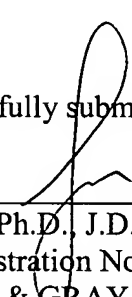
CONCLUSION

In view of the above amendment, Applicants believe the pending application is in condition for allowance. The Examiner is invited to telephone the undersigned to discuss any issue pertaining to this response. Applicants request favorable consideration of the application and early allowance of the pending claims.

Applicants believe no fee other than those authorized in the accompanying Amendment Transmittal is due in connection with the filing of this RCE Submission. However, if any other fee is due, please charge our Deposit Account No. **18-1945**, from which the undersigned is authorized to draw under Order No. **000293-0059-101**.

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Respectfully submitted,

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